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In the Supreme Court of the United States

October Term, 1946

No. [redacted] 30

FEDERAL TRADE COMMISSION,

Petitioner,

vs.

RIVERSIDE CEMENT COMPANY,

Respondent.

Brief of Respondent Riverside Cement Company in Opposition to Petition for Certiorari.

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LAUREN M. WRIGHT,
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In the Supreme Court of the United States

October Term, 1946

No. 929.

FEDERAL TRADE COMMISSION,

Petitioner,

vs.

RIVERSIDE CEMENT COMPANY,

Respondent.

Brief of Respondent Riverside Cement Company in Opposition to Petition for Certiorari.

In so far as matters generally applicable to all respondents in these companion proceedings are concerned, respondent Riverside (Case No. 929) respectfully joins in what has been said by other respondents and adopts each and all of the grounds and reasons advanced by them in opposition to the granting of the writs prayed for. And particularly it joins in stressing the utter inability of the Commission to find either as to the existence of, or as to the identity of the participants in, the combination or conspiracy charged in its complaint.

These matters do not, however, touch Riverside's main defense on the merits in this case. Riverside's marketing area is an isolated one. The great bulk of its cement is sold in the metropolitan areas of Southern California, the balance moving to Arizona and Southern Nevada. Riverside's principal contention throughout these entire proceedings has been that trade practices on the Pacific Coast generally and in the Southwest in particular have for

many years varied so greatly and so distinctly from the nation-wide pattern postulated by the Commission as utterly to destroy the latter's contention of the existence of the industry-wide combination or conspiracy charged.

We do not, of course, take the time here to argue these factual matters; but the material footnoted below clearly indicates that the evidence, the findings of the Commission (to the extent the Commission did find) and the opinion of the Circuit Court of Appeals amply reflect the fact that Riverside's defense was fully made out and that the setting aside of the Commission's order as to it, *at least*, was amply justified.*

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*Recognition by Commission of fact that basing point method of quoting prices both in Northern and Southern California had been abandoned prior to Riverside's joining the Cement Institute in 1933:

Southern California

"Basing Points.—The principal basing point used by Southern California mills was Crestmore, the location of the Riverside Cement Company's mill, *when basing points were used in determining delivered prices. Fixing prices by the basing-point method has been abandoned and prices are now fixed by price lists circulated among manufacturers and dealers showing the price to dealers at all delivery points.*" (Emphasis added.) (Report of Federal Trade Commission to U. S. Senate, Document No. 71, 73rd Congress, 2d Session, p. 115; Respondent Marquette's Exhibit 17.)

Northern California

"On August 12, 1929, the Henry Cowell Lime & Cement Co. inaugurated the practice of basing prices on the mill nearest destination and issued a price list showing destination prices in a large number of towns in California, Nevada, and Oregon, based on $2.45 per barrel at each of the northern California mills, plus freight to destination." (*Ibid.*, p. 127.)

The Commission's conclusion as to the above:

"This was an important change in the method of establishing destination prices and caused price reductions at all points in the northern California territory except those where the freight rate from Davenport controlled. *This ended the basing-point method of determining delivered prices as it is understood and applied in the eastern part of the United States and substituted*

It is respectfully urged that the Petition for Certiorari as to Riverside should be denied.

Respectfully submitted,

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therefor the price-list method." (Emphasis added.) (*Ibid.*, p. 127.)

Admitted zone price structure in Southern California:

"Mr. Wooden: Just for Your Honor's information, Counsel for the Commission have never contended for a moment that the basing-point system applied in full measure in Southern California and in Arizona, but that it was a combination of some territories on a zone price system and in other territories on a basing-point basis." (17 R. 13067.)

"In Southern California the basing-point system of pricing is modified by an elaborate system of zone prices applicable in certain areas." (F. (Finding) 7 (m). 24 R. 16000.)

All of Southern California where cement is sold zoned not later than April 1, 1936: Com. Ex. 1297.

Freight rate books not used west of Rockies: F. 8(c); 25 R. 16809.

Arizona and Southern Nevada prices all reflect back to nearest mill or mills freightwise: Com. Ex. 1295.

No controlling base for Arizona; any mill can and does raise or lower prices as business conditions warrant: Resp. Ex. 3453.

No phantom freight collected by Pacific Coast respondents: 25 R. 16798.

875 mill bids by Riverside to public agencies, 1930-1940: Resp. Ex. 3450.

No punitive bases in West: F. 10(a)-10(g).

No discrimination against foreign cement in West: 17 R. 13226.

West Coast mills ceased filing prices prior to end of Code period: 3 R. 1896.

During Code period West Coast companies filed price listed destination prices including prices delivered by truck: 3 R. 1821, 1876.